600 Third Avenue
New York, NY 10016

Marlene H. Dortch, Secretary
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W.
Washington, DC 20554

Re: ACA Petition for Rulemaking; RM-11203
Retransmission Consent, Network Non-Duplication
and Syndicated Exclusivity

April 18, 2005

Dear Ms. Dortch:

COURTROOM TELEVISION NETWORK LLC ("Court TV") submits this statement in response to the Commission's Public Notice, Report No. 2696, released March 17, 2005, regarding the Petition for Rulemaking filed by the American Cable Association ("ACA Petition") on March 2, 2005. The ACA Petition proposes revisions to the Commission's retransmission consent, network non-duplication and syndicated exclusivity rules in order to impose market-based discipline on local broadcasters who otherwise may demand from small cable operators excessive consideration in return for retransmission consent, either in the form of unreasonable cash payments or the carriage of additional, unwanted channels. Court TV urges the FCC to revisit the retransmission consent rules which have (i) resulted in unintended consequences for programming services unaffiliated with broadcasters, (ii) caused adverse marketplace consequences, and (iii) failed to serve consumers in the manner intended.

Courtroom Television Network LLC owns and distributes the program network Court TV® to cable, DBS and other multi-channel video programming distributors ("MVPDs"). Court TV® is the leader in the investigation genre, providing a window on the American system of justice through distinctive, unique programming that both informs and entertains. Court TV® telecasts trials by day and high-profile original programs like *Forensic Files®, Psychic Detectives™, Masterminds™* and *Impossible Heists™* in prime time. Court TV is owned equally by Time Warner Inc. and Liberty Media Corp, but has no ownership ties to any of the top 4 broadcast network groups.

Launched in 1991, Court TV recently passed 83 million subscribers and is one of the top 20 rated cable networks based on prime time Nielsen ratings.

As an independent cable network, without a broadcast network affiliation, Court TV competes for valuable shelf space with dozens of other cable and broadcast networks for both distribution on cable systems and DBS platforms as well as for advertising dollars. Importantly, the license fee revenue we secure from our MVPDs allows Court TV to produce original programming, unique trial coverage and award winning public service campaigns. Court TV has been competing for distribution and license fees in the cable and DBS landscape for 14 years, the last 10 years during the period when retransmission consent has been in effect. During that time, we have witnessed the significant impact of retransmission consent on the pace of our growth and the cost structure of our network. While we have achieved wide distribution and ratings milestones, we have done so more slowly and with considerably smaller license fees than cable networks affiliated with broadcasters that allow them the use of retransmission consent. Court TV's distribution came at a heavy price; in order to secure carriage and earn valuable analog shelf space in a finite world of distribution, Court TV paid well over $100 million dollars to grow its subscriber base.

The distribution competition we have faced over the past 10 years has intensified significantly because of retransmission consent regulation and consolidation in the media industry, specifically the merger of broadcast networks with companies which owned or developed cable networks. Every major broadcaster (ABC, CBS, FOX, NBC) elects retransmission consent in their owned and operated markets. It is virtually impossible for a cable system to drop a broadcast station if it disagrees with the price the broadcaster is seeking in its retransmission consent negotiations; five years ago, Time Warner Cable blacked out ABC in the New York area for nearly two days before consumer criticism forced the companies to sign a cease fire. Originally, since MVPDs needed to keep their programming costs down and not penalize consumers by passing through retransmission consent fees, MVPDs offered up extra bandwidth to broadcasters in lieu of cash payments. New cable networks were spawned and received huge carriage commitments and license fees solely because of their related broadcast networks. For example, Fox launched FX with a rate card at least twice as high as was warranted based on the industry averages; FX reached 20 million subscribers in its first year in business due to retransmission consent. Conversely, Court TV reached 20 million subscribers only after its 5th year in business. FX's rate card is more than double that of Court TV, even though the networks have comparable ratings. Similarly, NBC launched MSNBC, gaining full distribution twice as fast as Court TV; MSNBC had over 60 million subs in its 5th year in business. When Disney acquired ABC and its cable networks, including ESPN, Disney used its ABC retransmission consent leverage to launch

ESPN2 and SOAPnet, as well as renegotiating deals for ABC Family, with financial terms considerably above market rate. The Hearst-Argyle broadcast station group allowed Lifetime to use its retransmission consent to launch Lifetime Movie Network which reaches 44 million subscribers. When Viacom acquired CBS, MTV Networks, owned by Viacom, continued to see rapid growth and strong license fee revenue for all of its cable networks.

The relationship between broadcasters and their sister cable networks gives those cable networks tremendous - and unmatched - strength at the bargaining table in contract negotiations. Currently, ABC can grant MVPDs retransmission consent for its TV stations in the major cities of New York, Chicago, Los Angeles, Philadelphia and San Francisco in exchange for increased distribution for a fledgling cable network, like SoapNet, or for higher rates for a more mature network like ABC Family. The 16 Viacom-owned CBS stations can effectively withhold the Super Bowl (during the years when the event is broadcast on CBS) if cable operators do not agree to their license fee structure for all the MTV Networks or Viacom's demand to launch a fledgling channel like Nicktoons, as they did in December 2003 until a federal judge issued a restraining order to keep CBS on the Dish Network during the Super Bowl to allow more time for the parties to negotiate.

Simply stated, the retransmission consent laws are anti-competitive and outdated. Rather than providing consumers with the best and most diverse programming line-up, retransmission consent creates an artificial advantage for all networks affiliated with broadcasters. Independent cable networks like Court TV, that do not have a connection with any broadcast network, are competing on a severely tilted playing field in the distribution landscape and cannot fairly compete for shelf space or license fees, putting them at a severe competitive disadvantage. In the absence of retransmission consent, it would be reasonable to ask why such a tying arrangement doesn't violate antitrust laws. But with retransmission consent, the government has officially blessed the use of such unfair leverage. MVPDs often state: "Hey, what can I do about it? I have to carry the Super Bowl and the Olympics."

Intended vs. Unintended Consequences of Retransmission Consent

We understand that retransmission consent was originally intended to protect broadcasters and consumers, and to ensure diversity in programming. Congress aimed to preserve local broadcasting and maintain a competitive economic balance between cable networks and broadcast stations. Local broadcasters were granted the right to ask cable companies for compensation in exchange for the right to retransmit their signals to consumers. Some members of Congress believed a retransmission consent law would allow broadcasters to be treated like any other cable programmer and recognized that cable competes with broadcasters for advertising revenues.

At the time retransmission consent was established however, the broadcasters were not related to multiple cable networks. Today, CBS, FOX, ABC and NBC are owned by parent companies which also own sister cable networks. In fact, the parent companies of the big four broadcast networks also own more than 40 basic cable networks, including 15 of the top 30 rated basic cable networks (see attached exhibit). This is no coincidence, but rather the unintended effect of retransmission consent. In a world in which extracting cash compensation from cable operators for retransmission of local broadcast signals was apparently not a realistic outcome for broadcasters, as noted above, but in which distribution for new or not fully distributed cable networks was a realistic quid pro quo, it is not surprising that an overwhelming majority of networks gaining distribution have been corporate brethren of broadcast station groups, at the expense of non-broadcast affiliated cable networks. Furthermore, in such an environment, the value of cable networks to media companies with local broadcast groups is higher than it is to anyone else, due to their ability to extract this distribution, as well as to extract more favorable license fees. This has led to the steady consolidation of non-broadcast affiliated cable networks with those companies with broadcast groups. This has economically benefited the broadcast companies, at least at the corporate level, through the value created by the new cable networks. However, the consumer has not benefited from improved local over-the-air programming by the broadcasters (these economics were not improved), nor has the consumer benefited from a growth of independent voices in the cable programming space.

As we look into the future, based on over 10 years of experience of competing on an uneven playing field, we believe independent cable networks and autonomous voices will be increasingly disadvantaged by broadcast-related cable networks. Their opportunity to gain shelf space or negotiate arms'-length license fees is simply not comparable to networks affiliated with broadcasters. Further, the license fees available to pay those independent networks to create innovative programming and deliver the consumer unique choices in programming will be absorbed by the retransmission consent affiliated cable networks. In fact, the ACA Petition notes that in the upcoming round of retransmission consent, substantial per subscriber fees- in the amount of $860 million- will be demanded from small independent cable operators. It is no wonder that unaffiliated networks like Court TV are often told by MVPDs that they have limited programming budgets to spend on networks not allied with broadcasters.

Regulators, when enacting retransmission consent, never anticipated that the very broadcast stations they were trying to protect would some day be aligned with over 40 cable networks.

Retransmission consent is simply outdated regulatory policy—it precludes the television distribution arena from operating equitably. Rather than competing for shelf space in an open marketplace, the broadcasters increasingly use their regulatory advantage - retransmission consent - to gain precious shelf space for start-up cable networks and to renew space for existing groups of cable networks at higher than market rates. MVPDs cannot make rational decisions in the best interests of their subscribers and cannot fulfill their goal of offering diverse and high quality programming options to their customer base. Instead, the deck is stacked in favor of any network affiliated with a broadcaster, and independent networks like Court TV are severely disadvantaged.

We urge the FCC to carefully review the ACA petition and to re-examine these rules to create the necessary parity so that all programming services can fairly compete on merit.

Sincerely yours,

COURTROOM TELEVISION NETWORK LLC

By:___________/S/______________________
Robert Rose
Executive Vice President, Affiliate Relations

Basic Cable Network Ownership by Broadcasters

Disney
ABC Family
The Disney Channel
Toon Disney
SOAPnet
ESPN
ESPN 2
ESPN News, ESPN Now, ESPN Extreme
Classic Sports Network
A&E Television
The History Channel
Lifetime Television
Lifetime Movie Network
E! Entertainment

NBC
CNBC
MSNBC
Bravo
Mun2TV
Sci-Fi
Trio
USA

News Corporation
Fox News Channel
FX
National Geographic Channel
SPEED Channel
Fox Sports Net
Sunshine Network
Madison Square Garden Network

Viacom
MTV
MTV2
Nickelodeon
BET
TV Land
NOGGIN
VH1
Spike TV
CMT
Comedy Central